

PART 2900—REGULATIONS FOR IMPLEMENTATION OF THE FREEDOM OF INFORMATION ACT

Sec.

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§ 2900.1 General.

This part implements the Freedom of Information Act, section 552 of title 5, United States Code, and prescribes rules governing the availability to the public of documents and records of the Commission.

§ 2900.2 Requests for records.

(a) It is the policy of the Commission to make records and documents in its possession available to the public to the greatest extent possible. All records of the Commission are available for public inspection and copying in accordance with this section except those records or portions of records which the Executive Secretary or her designee specifically determines to be exempt from disclosure under section 552(b) of the Freedom of Information Act.

(b) A request for records shall be made in writing and directed to the Executive Secretary, Presidential Commission on the Assignment of Women in the Armed Forces, 1001 Pennsylvania Avenue NW., suite 275N, Washington, DC 20004. Such request, as well as the envelope containing the request, shall be clearly marked "Freedom of Information Act Request" and shall reasonably describe the record requested. Requests lacking a reasonable description will be filled only after a more comprehensive description is provided. The staff of the Commission will make reasonable efforts to assist a requester in formulating this request. Nothing in this section shall preclude staff of the Commission from complying with oral, unmarked, or generally stated requests for information and documents.

(c)(1) The Executive Secretary or her designee shall, within ten days after its

receipt (excepting Saturdays, Sundays, and legal federal holidays), either comply with or deny a request for records, provided that when additional time is required because of:

(i) A need to search for, collect and examine a voluminous amount of separate and distinct records demanded in a single request; or

(ii) A need for consultation with another agency having a substantial interest in the determination of the request.

(2) The time limit for disposing of the request may be extended for up to ten additional working days by written notice to the requester setting forth the reasons for and the anticipated length of the delay.

(d) The requester will be notified promptly of the determination made pursuant to paragraph (c) of this section. If the determination is to release the requested record, such record shall promptly be made available. If the determination is not to release the record, the person making the request shall, at the same time he is notified of such determination, be notified of:

(1) The reason for the determination;

(2) The name and title or position of each person responsible for the denial of his request; and

(3) The right to appeal the determination to the Chairman of the Commission within 30 days of receipt of a notice denying the request. An appeal shall be made in writing to the General Counsel, Presidential Commission on the Assignment of Women in the Armed Forces, 1001 Pennsylvania Avenue, NW., suite 275N, Washington, DC 20004. Both the envelope and the letter of appeal must be clearly marked "Freedom of Information Act Appeal." Unless the Chairman of the Commission otherwise directs, the General Counsel shall act on behalf of the Chairman of the Commission on all appeals. In no case, however, shall the individual who made the initial denial of the request render a decision on an appeal. A decision shall be rendered on an appeal within 20 days (excepting Saturdays, Sundays, and legal federal holidays) after the receipt of such appeal. The requester shall be notified promptly of the decision and, if the appeal is

denied, the reasons therefor and the requester's right to seek judicial review of such determination pursuant to the provisions of the Freedom of Information Act, 5 U.S.C. 552(a)(4).

§ 2900.3 Schedule of fees and methods of payment.

(a) *Definitions.* The following definitions apply in this section.

(1) *Direct costs* means those expenditures which the Commission actually incurs in searching for, duplicating, and (in the case of commercial use requests) reviewing documents to respond to a FOIA request.

(2) *Search* means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Line-by-line search will not be done when duplicating an entire document is a less expensive and quicker method of complying with a request. "Search" is distinguished from "review" (see paragraph (a)(4) of this section).

(3) *Duplication* means the process of making a copy of a document available to a requester. Copies can take the form of paper copy or audio-visual materials among others; however, copies will be provided in a form that is reasonably usable by requesters.

(4) *Review* means the process of examining documents located in response to an information request to determine whether any portion of any document is permitted to be withheld under FOIA. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) *Commercial use request* refers to a request from or made on behalf of one who seeks information to further the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. This would include a request made for information to further such interests through litigation. In determining whether a requester properly belongs in this category, the Commission may request information concerning the use to which

a requester will put the requested documents.

(6) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) *Non-commercial scientific institution* means an institution that is not operated on a "commercial" basis (as that term is defined in paragraph (a)(5) of this section) and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(8) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances where they qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Commission may also look to the past publication record of a requester in making this determination.

(b) *Cost to be included in fees.* The agency costs included in fees will vary according to the following categories of requests:

(1) *Commercial use requests.* Fees will include the Commission's full direct costs of searching for, reviewing for release, and duplicating the requested records.

(2) *Educational and non-commercial scientific institution requests.* The Commission will provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first two hours of search time and the first 100 pages (see paragraph (e) of this section). To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(3) *Requests from representatives of the news media.* The Commission will provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first two hours of search time and the first 100 pages (see paragraph (e) of this section). To be eligible for inclusion in this category a requester must meet the criteria in paragraph (a)(8) of this section.

(4) *All other requests.* The Commission will charge requesters who do not fit into any of the categories in paragraphs (b) (1) through (3) of this section fees which cover the full direct costs of searching for and reproducing records that are responsive to the request, except for the first two hours of search time and the first 100 pages (see paragraph (e) of this section). However, requests from persons for records about themselves will be treated under the fee provision of the Privacy Act of 1974, 5 U.S.C. 552a.

(c) *Fee calculation.* The Commission will calculate fees as follows:

(1) *Search.* \$16.50 per hour.

(2) *Review (commercial-use requests only).* \$16.50 per hour. Only the review necessary at the initial administrative level to determine the applicability of any exemption, and not review at the administrative appeal level, will be included in the fee. The Commission may charge for each review conducted to determine the applicability of different exemptions.

(3) *Duplication.* At 20 cents per page for paper copy. For copies of records prepared by computer, requester will be charged reasonable direct costs of

making a copy, including operator time. A request for records prepared by computer must be accompanied by either 3.5" diskette with 1.44 MB capacity or a 5.25" diskette with 1.2 MB capacity. Computer printouts will be charged at 20 cents per page.

(4) *Additional services.* Postage and other additional services requested above and beyond normal FOIA processing, such as express mail or courier delivery, will be charged at actual cost.

(d) *Assessment of interest.* The Commission may begin assessing interest charges on the 31st day following the day the fee bill is sent. Interest will be at the rate prescribed in section 31 U.S.C. 3717.

(e) *Free search and duplication.* Except for commercial use requests, the Commission (in accordance with 5 U.S.C. 552(a)(4)(A)(iv)) will provide the first 100 pages of duplication and the first two hours of search time to requesters without charge. In addition, the Commission will not impose a charge if the cost of collecting a fee will be equal to or greater than the fee itself. These provisions work together so that the Commission will not begin to assess fees until after providing the free search and reproduction.

(f) *Waiver or reduction of fees.* In accordance with 5 U.S.C. 552(a)(4)(A)(iii), the Commission will furnish documents without charge, or at a reduced charge, where disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(g) *Remittances.* (1) Remittances shall be in the form of either a bank draft drawn on a bank in the United States, a money order, or cash.

(2) Remittances shall be made payable to the order of the U.S. Treasury and mailed or delivered to the Executive Secretary, Presidential Commission on the Assignment of Women in the Armed Forces, 1001 Pennsylvania Ave., NW., suite 275N, Washington, DC 20004. The Commission will assume no responsibility for cash which is lost in the mail.

(3) A receipt for fees paid will be given only upon request.

(4) Where it is anticipated that the fees chargeable under this section amount to more than \$250.00, and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester will be notified of the amount of the anticipated fee. If the requester does not agree to pay the estimated fees, the Commission may suspend the search and processing of records or, when appropriate (see paragraph (h) of this section), require an advance deposit. Requesters may confer with Commission personnel in an attempt to formulate the request so as to meet their needs at lower cost.

(h) *Advance payment fees.* The Commission will not require a requester to make an advance payment, *i.e.*, payment before work is commenced or continued on a request, except in the following situations:

(1) When the allowable charges that a requester will be required to pay are projected to exceed \$250.00, the Commission may require the requester to make an advance payment of the entire fee, or a portion of the fee, before continuing to process the request.

(2) If a requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the billing date), the Commission will require the requester to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before it begins to process a new request or a pending request from the requester.

(i) *Other provisions—*(1) *Charges for unsuccessful search.* The Commission may assess charges for time spent searching for requested records, even if the search fails to locate responsive records or the records are determined, after review, to be exempt from disclosure.

(2) *Aggregating requests to avoid fees.* When the Commission reasonably determines that a requester is attempting to break a single request down into a series of requests for the purpose of evading the assessment fees, the Commission aggregate any such requests and charge the applicable fee. However, the Commission will not aggregate multiple requests on unrelated subjects from one requester.